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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,701	10/15/2004	Teruhiko Suzuki	260020US6PCT	9481
22850 7590 01/29/2010 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
PE, GEEPY				
ART UNIT		PAPER NUMBER		
2621				
NOTIFICATION DATE		DELIVERY MODE		
01/29/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/510,701

Applicant(s)

SUZUKI, TERUHIKO

Examiner

Geepy Pe

Art Unit

2621

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 6 and 7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 6 and 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 June 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/31/09 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 1, 6, and 7, as filed on 12/31/09, have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims **1, 6, and 7** are rejected under 35 U.S.C. 103(a) as being unpatentable over Tahara et al. (U.S. Pat. 6,671,323; hereinafter Tahara; already of record), in view of Ashikhmin et al. (U.S. Pat. 7,013,116; hereinafter Ashikhmin).

Re. **claim 1**, Tahara teaches an encoding device (Tahara: col. 1, lines 7-8) comprising: generating means for generating a header to which reference is made as needed during decoding (Tahara: col. 8, line 12; Figs. 11, 22, 23, 26, 28C & 29: i.e., headers are generated for use in the MPEG stream); encoding means for encoding the header generated by the generating means and an input image signal, respectively (Tahara: col. 1, lines 7-8; Figs. 1 & 2, element 2; Fig. 4; Fig. 28C); and outputting means for multiplexing the header and the image signal encoded by the encoding means and outputting a bitstream, wherein the generating means generates the header containing buffer characteristic information about buffering during decoding of the bitstream, and the buffer characteristic information contains all of a minimum bit rate R_{\min} , a minimum decoder buffer size B_{\min} , and a minimum delay amount F_{\min} which are decodable during decoding of the bitstream (Tahara: Fig. 4; col. 6, lines 28-43; Fig. 11; col. 14, lines 5-8; Figs. 11 & 23; col. 13, line 52 - col. 14, line 24). Yet, Tahara does not explicitly teach that R_{\min} , B_{\min} , and F_{\min} are used to generate a characteristic curve that is used to determine whether the bitstream is decodable at a decoding device, even though Tahara teaches the minimums, and generating the characteristic curve. That is, that those metrics lie above the generated curve (Remarks of 10/26/09: pg. 6, lines 8-11). However, in the same field of endeavor, Ashikhmin teaches the curve needing to be above a curve for about 95% of the curve (Ashikhmin: col. 14, lines 16-34,

46-65; Fig. 5, 8) for the benefit of decreasing the bit error rate of the decoded signal (Ashikhmin: col. 2, lines 27-28). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that R_{\min} , B_{\min} , and F_{\min} are used to generate a characteristic curve that is used to determine whether the bitstream is decodable at a decoding device in the Tahara invention, as shown in Ashikhmin, for the benefit of decreasing the bit error rate of the decoded signal. The Tahara invention, now incorporating the Ashikhmin invention, has all the limitations of claim 1.

Re. **claims 6 and 7**, the claim(s) recites analogous limitations to claim(s) 1 above, and is/are therefore rejected on the same premise.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Geepy Pe whose telephone number is (571)-270-3703. The examiner can normally be reached on Monday - Friday, 7:00AM - 3:30PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mehrdad Dastouri can be reached on 571-272-7418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. P./
/Geepy Pe/
Examiner, Art Unit 2621

/Andy S. Rao/
Primary Examiner, Art Unit 2621
January 25, 2010